

REMARKS

Summary of the Office Action

Claim 2 stands rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,634,536 to *Yoshie*.

Claims 4-5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Yoshie*.

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

Summary of the Response to the Office Action

Applicants have amended claims 2 and 4-5. No new matter has been introduced. Claim 1 is cancelled and claim 6 is withdrawn. Applicants respectfully submit that the newly added features to claims 2, 4, and 5 are not taught or suggested by the applied references of record. Accordingly, claims 2-5 are presently pending.

Allowable Subject Matter

Applicants wish to thank the Examiner for indicating allowable subject matter in claim 3.

All Claims Comply With 35 U.S.C. § 102(e)

Claim 2 stands rejected under 35 U.S.C. § 102(e) as being anticipated by *Yoshie*.

Applicants respectfully traverse the rejection for at least the following reasons.

Applicants respectfully submit that the Office Action has not established that *Yoshie* anticipates each and every feature of Applicants' claimed invention and that all rejections under 35 U.S.C. § 102(e) should be withdrawn. Newly amended independent claims 2, 4, and 5 recite,

in part, "a wing piece formed on each side of the table and extending downward along each side of the main frame body." *Yoshie* fails to teach or suggest at least these features of claims 2, 4, and 5.

The Office Action equates *Yoshie* with the claimed invention. But *Yoshie* discloses a stapler without wing pieces. *Yoshie* does not disclose, teach, or suggest at least "a wing piece formed on each side of the table and extending downward along each side of the main frame body," as recited in claims 2, 4, and 5. In Fig. 46 of *Yoshie*, the alleged wing piece (251) does not extend from each side of the table and along each side of the main frame body. Accordingly, *Yoshie* fails to teach or suggest each and every feature of claims 2, 4, and 5. Thus, the rejection of claim 2 should be withdrawn.

As pointed out in MPEP § 2131, a claim is anticipated by a prior art reference only if each and every element as set forth in the claim is found. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051 (Fed. Cir. 1987). Therefore, Applicants respectfully assert that the rejection under 35 U.S.C. § 102(b) should be withdrawn because *Yoshie* does not teach or suggest each feature of independent claims 2, 4, and 5.

All Claims Comply With 35 U.S.C. § 103(a)

Claims 4-5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Yoshie*. Applicants respectfully traverse the rejection for at least the following reasons.

Applicants respectfully assert that the rejection of claims 4-5 as being upatentable over *Yoshie* is moot in light of their amendment. As demonstrated above, *Yoshie* does not disclose the above-mentioned features of newly amended independent claims 2 and 4-5. Accordingly, *Yoshie*

combined with the Examiner's Official Notice fails to teach or suggest each and every feature of claims 4-5. Thus, Applicants respectfully request that the rejections under 35 U.S.C. § 103(a) be withdrawn.

The Office Action has taken Official Notice that a locking means comprises an eccentric cam, and a locking piece formed with locking teeth engageable with the engaging teeth of a stapler. In this Final Office Action, official notice is inappropriate. See M.P.E.P. § 2144.03:

"Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961))."

It is not appropriate to rely solely on alleged "common knowledge" in the art without evidentiary support in the record as the principal evidence upon which a rejection was based. Thus, Applicants respectfully submit that the Examiner either find prior art showing the features above-mentioned or withdraw the rejections of claims 4-5 under 35 U.S.C. § 103(a) as being unpatentable over *Yoshie*.

Moreover, in present invention, a locking mechanism is formed between a wing piece integrally pivoted with a table, and a main body. As a result, it is not required to design a pivotal stroke of the table to be greater, when a range of varying the thickness of the sheets is large. Therefore, even if a large binding load is generated at a front end side of the table, the table can be locked at a closed position thereof.

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On the other hand, member 251 of *Yoshie* is located at a rear side of a table. If a large binding load is generated at a front end side of the table, the table cannot be locked at a closed position. Therefore, the configuration of *Yoshie* cannot be employed for a large-size stapler. This problem as demonstrated in *Yoshie* is discussed in the background art of the original specification of the present invention.

CONCLUSION

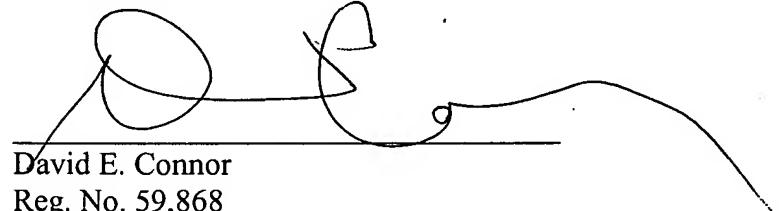
In view of the foregoing, Applicants respectfully requests entry of the amendments to place the application in clear condition for allowance or, in the alternative, in better form for appeal.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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